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*Carlton Fields practices law in California through Carlton Fields Jorden Burt, LLP*

Carlton Fields
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**TRADEMARK AND SERVICE MARK LICENSE AGREEMENT**

This Trademark and Service Mark License Agreement (“Agreement”) is made between      , a      having offices at       (“Licensor”) and      , a       corporation having offices at       (“Licensee”) is made effective on       (“Effective Date”).

**WHEREAS**, Licensor has certain rights in the trademarks, trade names, and service marks identified on Exhibit A attached hereto (the “Marks”);

**WHEREAS**, Licensor seeks to convey to Licensee certain rights to or under the Marks subject to certain terms and conditions; and

**WHEREAS**, the parties desire to record, memorialize, codify, and affirm the terms and conditions under which the Marks and associated rights, if any, are to be licensed from Licensor to Licensee;

**NOW THEREFORE**, in consideration of the mutual promises and covenants set forth in this Agreement, Licensor and each Licensee hereby agree as follows:

# DEFINITIONS

## "Licensed Marks" shall mean those terms and designs listed in Exhibit A of this Agreement.

## "Licensed Products" shall mean any products offered or sold by Licensee bearing, or in connection with, a Licensed Mark.

## "Licensed Services" shall mean any services sold by Licensee in connection with a Licensed Mark.

# LICENSE GRANT

Subject to the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee for the duration of this Agreement, a [SELECT EITHER EXCLUSIVE OR NON-EXCLUSIVE], [INSERT PAYMENT TERMS OR STATE IT IS ROYALTY FREE] license to use the Licensed Marks [ENTER GEOGRAPHIC SCOPE OF THE LICENSE] on Licensed Products and in connection with Licensed Services, but only so long as Licensee complies with all provisions under this Agreement. The effective date of the license granted on each mark shall be the Effective Date. The rights granted to Licensee hereunder are personal and may not be assigned or sublicensed by Licensee without the express consent of Licensor.

# QUALITY CONTROL

## Licensee shall comply with all laws, regulations and interpretations thereof pertaining to the manufacture, sale and distribution of the Licensed Products, and shall design and manufacture the Licensed Products so as to avoid any unreasonable dangers to the purchasers or users of the Licensed Products.

## Licensee shall comply with all laws, regulations and interpretations thereof pertaining to the marketing, sale, and performance of the Licensed Services, and shall perform such services in a professional and workmanlike manner.

## Licensee acknowledges that Licensor shall, at all times, fully control the nature and quality of all Licensed Products and Licensed Services.

### For each good and/or service Licensee proposes to offer or sell under the Licensed Marks, Licensee shall identify and, upon request, provide samples of, each such good and/or service to Licensor for approval prior to the date of first offer of sale. Should Licensor, in its sole discretion, refuse to approve such good and/or service, Licensee shall make no further use of the Licensed Marks in connection therewith unless and until Licensor gives its approval.

### Subsequent to Licensor’s initial approval, upon request of Licensor, Licensee shall provide Licensor with samples of each Licensed Product (“Product Samples”) and documentation describing the nature and quality of each Licensed Service (“Services Documentation”). Should Licensor, in its sole discretion, determine that the Product Samples or services provided in conformance with the Services Documentation, are of a nature or quality that is unacceptable to Licensor, Licensee shall immediately bring the Licensed Goods and Licensed Services into compliance with Licensor’s standards, or terminate this Agreement according to the provisions of Section 7 herein.

### Notwithstanding the foregoing, Licensor hereby acknowledges that it has inspected or is otherwise fully familiar with the goods and/or services listed in Exhibit B attached hereto and approves such goods and/or services for use in connection with the Licensed Marks.

### Approvals, disapprovals, and determinations made pursuant to this section 3.3 need not be made in writing.

# RECOGNITION OF OWNERSHIP

## Licensee expressly recognizes Licensor's rights and title to the Licensed Marks and the goodwill associated therewith and shall not at any time do or permit to be done any action or thing that will in any way impair the rights of Licensor in and to the Licensed Marks. It is understood that Licensee shall not acquire or claim any title to the Licensed Marks adverse to Licensor by virtue of the license granted to Licensee or through Licensee's use of the Licensed Marks, it being the intention of the parties that all use of the Licensed Marks by Licensee shall at all times inure to the benefit of Licensor.

## Licensee, if requested by Licensor, will execute and file, at Licensor's expense, applications for registration of any of the Licensed Marks with regard to the Licensed Products or Licensed Services and Licensee further expressly agrees that Licensee will, upon written request of Licensor, assign to Licensor the applications and all rights and goodwill in the Licensed Marks, as used on the Licensed Products and/or in connection with the Licensed Services.

# INFRINGEMENT

Licensee shall inform Licensor promptly of any infringements or of any acts of unfair competition affecting the Licensed Marks that come to the attention of Licensee. Licensor will have the exclusive right, but not the obligation, to initiate and control proceedings against any such infringement or acts of unfair competition. In the event that Licensor decides to initiate proceedings against any such infringement and acts of unfair competition, each Licensee agrees to assist Licensor in whatever manner Licensor may direct, at the expense of Licensor.

# PROTECTION OF Licensor

## Licensee shall not be considered a joint venturer, partner or agent of Licensor by virtue of this Agreement and no Licensee shall have the power to bind or obligate Licensor by virtue of this Agreement.

## Licensee shall hold Licensor harmless and indemnify Licensor from any and all third party claims, demands, liability for loss, or loss pertaining to the manufacture, offer for sale, sale, or use by others of the Licensed Products or Licensed Services, including any claims, demands liability for loss or loss relating to violation of any laws, regulations or interpretations thereof pertaining to the manufacture, sale and distribution of the Licensed Products or the marketing, sale or performance of the Licensed Services.

# TERM AND TERMINATION

## This Agreement shall remain in effect from the Effective Date (i) until terminated pursuant to the provisions herebelow, or (ii) until terminated by Licensor or Licensee upon [\_\_\_] days written notice.[[1]](#footnote-1)

## In the event that Licensee materially breaches its obligations required to be performed under this Agreement after written notice to so perform has been given by Licensor, and if any such failure to perform continues for thirty (30) days after receipt of such written notice from Licensor, Licensor shall have the right to declare Licensee in breach of this Agreement and to terminate the Agreement by written notice to Licensee at any time after the expiration of such thirty (30) day period.

## In the event of termination of this Agreement for any reason, Licensee shall forthwith discontinue any production of the Licensed Product bearing the Licensed Marks, shall discontinue the sale and marketing of the Licensed Services, and shall cease immediately any use or display of the Licensed Marks, including, without limitation, termination of the use of any advertising or promotional material, packaging or other documents or things displaying the Licensed Marks or any colorable variation thereof and shall make no further representation or statement that such Licensee is in any way approved, endorsed, or authorized by Licensor to use the Licensed Marks for any purpose whatsoever.

## Upon termination of this Agreement for any reason, Licensee shall not register, seek to register or use any trademark confusingly similar to any of the Licensed Marks.

# MISCELLANEOUS

## This Agreement shall be governed by the laws of the State of \_\_\_\_\_\_\_\_\_.

## If any provision of this Agreement is declared invalid or unenforceable under the laws or regulations of any nation or state, the remaining provisions of this Agreement shall remain in full force and effect, the invalid or unenforceable provision or provisions being deemed severable.

## This Agreement shall be binding upon each Licensee and its successors and assigns. This Agreement constitutes the complete and only agreement between the parties and supersedes and cancels any and all previous agreements, oral or written, between the parties. This Agreement can be amended only by a written document executed by both parties to this Agreement.

## Licensor may freely assign or otherwise transfer this Agreement without notice to, or consent of, Licensee.

**IN WITNESS WHEREOF,** the parties hereto have duly executed this Agreement as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_.

**Licensor:** **, a** **[INSERT TYPE OF COMPANY, INC., LLC, ETC.]**

 **BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**its**

**Licensee:** **, a** **[INSERT TYPE OF COMPANY, INC., LLC, ETC.]**

 **BY:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **NAME:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **TITLE:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Exhibit A**

Licensed Marks

1.

**Exhibit B**

Pre-Approved Goods and Services

1.

1. Another option is to set the term for a specific number of years. [↑](#footnote-ref-1)